

APPEAL NO. 93109

Following two continuances, a contested case hearing was held in Austin, Texas, on January 19, 1993, (hearing officer) presiding as hearing officer. He determined the appellant (claimant) did not sustain a compensable on (date of injury), and did not have disability as a result of the claimed injury. Accordingly, he denied benefits under the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN., art 8308-1.01 *et seq* (Vernon Supp. 1993) (1989 Act). Claimant urges error in that the hearing officer's decision exceeded the scope of the issues in the case, failed to address one issue, and is wrong in determining that he did not have disability and an entitlement to temporary income benefits (TIBs). Claimant also complains about evidence admitted over objection and asserts this was reversible error. Respondent (carrier) contends that the hearing officer's Decision and Order is substantially correct and should be modified and affirmed while conceding that the claimant sustained a minor strain to his hip and low back on (date of injury).

DECISION

Finding error in the Decision and Order of the hearing officer requiring corrective action, we reverse and remand.

The issues in the case as stated at the beginning of the hearing are:

1. did the claimant sustain an injury to his head, neck and arm in the course and scope of his employment on (date of injury);
2. is the carrier liable for medical treatment related to the claimed (date of injury) injury;
3. has the claimant sustained disability as a result of the claimed injury of (date of injury); and, if so,
4. what temporary income benefits are due.

The evidence of record is thoroughly and fairly set forth in the hearing officer's Decision and Order and is adopted herein. The claimant testified, a number of medical records were admitted and the carrier called several witnesses: (BH), the supervisor, (DB), the employer's safety director, and (KP), an investigator hired by the carrier. Briefly, on (date of injury), the claimant, a heavy equipment operator by trade, was working on a highway project for employer. There had been rain and he was removing water from the roadway manually. A pickup truck was being backed up to where the claimant was bending over draining water. The pickup truck was braked to a stop but because of the slippery condition slowly slid into the claimant and hit him in the back, causing him to fall forward, flat into the muddy water. There were several versions as to how and where the claimant was hit in his testimony and in the histories contained in the various medical reports e.g., that he was hit in the buttocks and sprawled forward face down in mud and water, that he had been run over by the pickup and was pinned under the truck, that he was in a ditch after being hit

by the truck, and that when the truck hit him, he fell backward striking his back and head, and that he blacked out. The testimony of the supervisor who was at the scene indicated that the claimant was not hit hard by the truck and that it only knocked him forward causing him to fall forward into the water and mud. The claimant was asked if he was hurt and stated he wasn't and only wanted a ride to his truck so he could change clothes. The claimant continued working and did not go to a doctor until a week following the incident wherein he was diagnosed as having acute back strain and bruising of the hip. Subsequently, he was terminated for other, unrelated reasons and has not worked since. Over the ensuing months, the claimant states that the incident has caused him to pass out three to five times a week, that he has numbness and pain in his neck and in his left arm, loss of weight and hair, a rash on parts of his body and left leg pain and decreased strength in his left lower leg. A number of objective tests over the months and with several different doctors tend to show normal results. A report of a doctor appointed by a Disability Determination Officer, at least partially based upon the history of the incident provided by the claimant (at variance with previous versions and other evidence), generally showed normal objective tests relating to the complaints but with tenderness in the low back and shoulder area with some decreased range of motion. This doctor's report related the claimant's complaints to the incident of (date of injury). Virtually all of the medical reports mention some degree of back injury or strain.

The carrier brought forth evidence that showed the claimant had experienced a black-out incident several days before the incident of (date of injury). Also, the carrier established that claimant was a frequent rodeo participant both before and after the incident of (date of injury), who participated in events including roping calves and that, contrary to what claimant had told his doctor, he was a drinker of some degree. A video was introduced which showed claimant riding and participating in calf roping events.

The hearing officer indicates in his Decision and Order that he found the claimant to be lacking in veracity. We do not have any quarrel with this aspect of the hearing officer's Decision and Order. What troubles us is one of the hearing officer's findings and conclusions, which may have tainted other findings and conclusions, and his lack of finding on an issue before him. His finding and conclusion that the claimant did not sustain a (emphasis added) compensable injury on (date of injury), goes beyond the first issue as framed at the outset of the hearing. Because an injury to the claimant was not contested by the carrier at the hearing or in its reply to this appeal, corrective action is necessary. There is evidence to support that there was some degree of injury from the (date of injury), incident, and the carrier in its reply states that it "concedes that claimant sustained a minor strain to his hip and low back on that date." Under the circumstances, the hearing officer's conclusion that the claimant did not sustain a compensable injury at all must be disapproved. As stated above, there is mention of back related problems in virtually all the medical reports starting from the initial evaluation by the doctor to whom the claimant was taken by his employer when he, the claimant, so requested a week following the incident. In addition,

the hearing officer's Decision and Order does not contain any findings regarding the carrier's liability for any medical treatment. Since his decision is apparently footed on the erroneous conclusion (and outside the scope of the issue raised) that no compensable injury at all occurred on (date of injury), we cannot determine the effect it had on his determination that "[t]here was no apparent correlation between the claimant's medical problems, if any, and the incident of (date of injury)," and further, on his determination that the claimant did not have disability. In this regard, although the issue involving the question of disability was framed as to "the claimed injury of (date of injury)," we cannot be certain whether the determination of no disability was also predicated upon the erroneous finding of no injury at all and that a different result might possibly have been reached regarding only the hip and back injury. Regarding the medical treatment issue, we are not able to determine what medical treatment can or should appropriately be attributed to the injury resulting from the (date of injury) incident. However, we note that the initial doctor (the doctor used by the employer and to whom the claimant was taken) who saw the claimant one week following the incident indicated a diagnosis of acute back strain, with bruises to the left hip, and stated his belief that the claimant should be over it and back at full work by about the middle of November. "An injured employee is entitled to all health care reasonably required by the nature of the compensable injury as and when needed." Article 8308-4.61(a). On this remand, the hearing officer needs to further consider his determination that the claimant did not sustain a compensable injury on (date of injury) and to determine what medical treatment related to the (date of injury) incident and whether such treatment has been provided or should be required to be covered by the carrier. Also, he should further consider the matter of disability to clarify if his determination on this issue considered the injury to the claimant's hip and back, or if it was erroneously predicated upon no injury at all having been sustained on (date of injury).

We have reviewed the evidentiary objections raised by the claimant at the hearing and again on appeal concerning noncompliance with the discovery requirements of the 1989 Act and implementing rules and do not find any abuse of discretion on the part of the hearing officer in determining, under the circumstances, that good cause existed for such noncompliance. Texas Workers' Compensation Commission Appeal No. 93068, decided March 10, 1993; Texas Workers' Compensation Commission Appeal No. 91009, decided September 4, 1991.

The case is remanded for further consideration, not inconsistent with this opinion, and development of evidence, as deemed necessary or appropriate by the hearing officer. A final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Texas Worker's

Compensation Commission's division of hearings, pursuant to Article 8308-6.41. See Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Lynda H. Nesenholtz
Appeals Judge

Thomas A. Knapp
Appeals Judge